



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
801 NORTH QUINCY STREET  
SUITE 300  
ARLINGTON, VA 22203

THE CAYUGA NATION by its	)	Order Denying Motion to Assume
COUNCIL OF CHIEFS and CLAN	)	Jurisdiction
MOTHERS,	)	
Appellants,	)	
	)	
v.	)	Docket No. IBIA 17-025
	)	
EASTERN REGIONAL DIRECTOR,	)	
BUREAU OF INDIAN AFFAIRS,	)	
Appellee.	)	August 2, 2017

On July 13, 2017, Michael S. Black, Acting Assistant Secretary – Indian Affairs (Assistant Secretary), affirmed a December 15, 2016, decision by the Eastern Regional Director (Regional Director), Bureau of Indian Affairs (BIA), accepting as legitimate a “Statement of Support” initiative to resolve a leadership dispute between two factions within the Cayuga Nation, awarding an Indian Self-Determination Act (ISDA) contract to the faction known as the Halftown Council, and returning as unauthorized a competing ISDA contract proposal submitted by Appellants, known as the Jacobs Council. Appellants initially appealed the Regional Director’s decision to the Board of Indian Appeals (Board). After the Board received a timely notice from the Assistant Secretary that he was exercising authority under 25 C.F.R. § 2.20(c) and 43 C.F.R. § 4.332(b) to assume jurisdiction over the appeal, and after briefing by the parties on that issue, the Board transferred the appeal and transmitted all documents concerning the appeal to the Assistant Secretary. Notice of Assumption of Jurisdiction Over Tribal Governance Decision by the Assistant Secretary, Mar. 10, 2017.

Following the Assistant Secretary’s decision, on July 28, 2017, the Board received from Appellants a motion for the Board to assume jurisdiction over the appeal “on the grounds that no decision on the appeal was issued by an Assistant Secretary within 60 days after the completion of briefing, as required by 25 C.F.R. § 2.20(c)(2).” Motion for Assumption of Jurisdiction, July 27, 2017, at 1 (Motion). Appellants argue that, under 25 C.F.R. § 2.20(e), if no decision is signed by the Assistant Secretary within the 60-day period provided in § 2.20(c), “any party may move the Board of Indian Appeals to assume jurisdiction.” *Id.* at 3 (quoting 25 C.F.R. § 2.20(e)).

Appellants acknowledge that the Assistant Secretary's decision was issued within the 60-day period, but argue that Michael Black was no longer the Acting Assistant Secretary at the time he issued the decision. *Id.* at 2-3. Appellants contend that, based on "information and belief," Michael Black was reassigned from his position of Acting Assistant Secretary effective June 28, 2017, before the "purported issuance" of his July 13, 2017, decision. *Id.* at 3. Specifically, Appellants cite and attach newspaper articles concerning senior executive reassignments in the Department of the Interior.<sup>1</sup> *Id.*, Exhibits (Ex). C & D (newspaper articles).

Appellants also attach to their Motion the Assistant Secretary's decision, which is signed by Michael Black as "Acting Assistant Secretary – Indian Affairs," and dated July 13, 2017. Motion, Ex. E. In his decision, as relevant to the Motion now before the Board, the Assistant Secretary explained that the Secretary of the Interior (Secretary), Ryan Zinke, extended Michael Black's delegation as Acting Assistant Secretary by Secretarial Order No. 3345, Amendment No. 5, on May 19, 2017 (S.O. 3345A5). Decision at 10 & nn.72-73. The Assistant Secretary further explained that this Secretarial Order "provides that unless the [Assistant Secretary] position is otherwise filled pursuant to applicable law, [his] delegated authority expires on *July 31, 2017*." *Id.* at 10 n.73 (quoting S.O. 3345A5) (emphasis added).

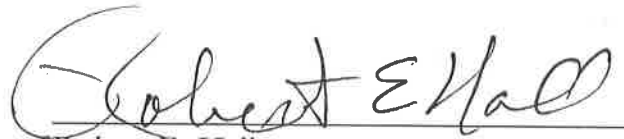
"A legal presumption of regularity supports the official acts of public officers acting in their official capacities." *Walch Logging Co. v. Assistant Area Director (Economic Development), Portland Area Office*, 11 IBIA 85, 112 (1983); see *Estate of Irene Theresa Shoots Another Butterfly*, 16 IBIA 213, 220 (1988) ("a document signed by a BIA official and maintained as a BIA record . . . is entitled to a presumption of regularity"). Appellants do not meet their burden to show that the Secretary's delegation of authority to Michael Black as Acting Assistant Secretary expired prior to his July 13, 2017, decision. The newspaper articles on which Appellants rely simply refer to notices that were apparently issued to a number of senior Departmental officials regarding future reassignments, and neither article provides details pertinent to the alleged reassignment of Michael Black, such as an effective date of his putative reassignment. Moreover, the Board takes official notice, see 43 C.F.R. § 4.24(b), that on July 18, 2017, and again on July 28, 2017, the Secretary further extended Michael Black's delegation as Acting Assistant Secretary by Secretarial Order

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<sup>1</sup> On July, 31, 2017, the Board received a brief in opposition to the Motion, filed by Daniel J. French, Esq. and David W. DeBruin, Esq., on behalf of unspecified "Interested Parties," arguing that the Motion is untimely. Interested Parties' Opposition to Appellants' Motion for Assumption of Jurisdiction and Cross-Motion to Dismiss, July 31, 2017. Because the Board denies the Motion on other grounds, it need not address the timeliness issue.

No. 3345, Amendment No. 6 and Amendment No. 7, respectively, until September 30, 2017 (copies enclosed).

Therefore, the Motion is denied.

A handwritten signature in cursive script, reading "Robert E. Hall", written over a horizontal line.

Robert E. Hall  
Administrative Judge

Enclosure

Distribution: See attached list.

**Distribution: IBIA 17-025**

Alexandra C. Page, Esq.  
for Appellant, Cayuga Nation  
(Jacobs Council)  
Berkey Williams LLP  
616 Whittier Street, NW  
Washington, DC 20012

David W. DeBruin, Esq.  
for Halftown Council  
Jenner & Block LLP  
1099 New York Avenue, NW  
Washington, DC 20001

Eric F. Facer, Esq.  
Law Offices of Eric F. Facer, PLLC  
1025 Connecticut Avenue NW, Suite 1000  
Washington, DC 20036

Niels Holch, Esq.  
Holch & Erickson LLP  
400 North Capitol Street NW, Suite 585  
Washington, DC 20001

Daniel J. French, Esq.  
Barclay Damon LLP  
Barclay Damon Tower  
125 East Jefferson Street  
Syracuse, NY 13202

Eastern Regional Director  
Bureau of Indian Affairs  
545 Marriott Drive, Suite 700  
Nashville, TN 37214

Leta Hollon, Esq.  
Office of the Knoxville Field Solicitor  
U.S. Department of the Interior  
800 S. Gay Street, Suite 800  
Knoxville, TN 37929

Assistant Secretary - Indian Affairs  
U.S. Department of the Interior  
1849 C Street, NW, MS 3642 - MIB  
Washington, DC 20240

Samuel E. Ennis, Esq.  
Office of the Solicitor  
U.S. Department of the Interior  
1849 C Street, NW, MS 6513 - MIB  
Washington, DC 20240



THE SECRETARY OF THE INTERIOR  
WASHINGTON

ORDER NO. 3345, Amendment No. 7 (*Amended material bold and italicized*)

Subject: Temporary Redelelegation of Authority for Certain Vacant Non-Career  
Senate-Confirmed Positions

**Sec. 1 Purpose.** The purpose of this Order is to temporarily redelegate authority for the following vacant non-career Presidentially appointed and Senate-confirmed positions for which there is no Principal Deputy that would automatically become acting by operation of law:

- a. Deputy Secretary
- b. Solicitor
- c. Assistant Secretary – Policy, Management and Budget
- d. Assistant Secretary – Land and Minerals Management
- e. Assistant Secretary – Water and Science
- f. Assistant Secretary for Fish and Wildlife and Parks
- g. Assistant Secretary – Indian Affairs
- h. Commissioner, Bureau of Reclamation
- i. Director, Bureau of Land Management
- j. Special Trustee for American Indians

This Order is intended to ensure uninterrupted management and execution of the duties of these vacant non-career positions during the Presidential transition pending Senate-confirmation of new non-career officials. In conjunction with the officials who will be acting under the Vacancies Reform Act, this Order will provide necessary decision making authority to Presidentially appointed and Senate-confirmed positions across the Department of the Interior. The delegations made by this Order will only be in effect until each vacant non-career position is filled by Senate-confirmed appointees, upon the subsequent designation of acting officials, or a subsequent delegation to alternate officials.

**Sec. 2 Authority.** This Order is issued under the authority of Section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262), as amended, and in compliance with the Vacancies Reform Act.

**Sec. 3 Delegation.** All functions, duties, and responsibilities of the following positions are hereby delegated to the specified employees:

- a. Deputy Secretary to James Cason, Associate Deputy Secretary
- b. Solicitor to Daniel Jorjani, Principal Deputy Solicitor
- c. Assistant Secretary – Policy, Management and Budget to Amy Holley, Chief of Staff to the Assistant Secretary – Policy, Management and Budget
- d. Assistant Secretary – Land and Minerals Management to Katharine MacGregor, Deputy Assistant Secretary – Land and Minerals Management
- e. Assistant Secretary – Water and Science to **Andrea J. Travnicek**,  
**Deputy Assistant Secretary – Water and Science**
- f. Assistant Secretary for Fish and Wildlife and Parks to Todd Willens, Assistant Deputy Secretary
- g. Assistant Secretary – Indian Affairs to Michael Black, Special Assistant to the Director, Bureau of Indian Affairs
- h. Commissioner, Bureau of Reclamation to Alan Mikkelsen, Deputy Commissioner
- i. Director, Bureau of Land Management to Michael D. Nedd, Assistant Director, Minerals and Realty Management
- j. Special Trustee for American Indians to Deb DuMontier, Deputy Special Trustee for American Indians.

The authority delegated herein may be further delegated by the designee as necessary, consistent with 200 DM 1 and all applicable statutes and regulations.

**Sec. 4 Limitation.** This delegation covers only those functions or duties that are not required by statute or regulation to be performed only by the Senate-confirmed official occupying the position. The Secretary must perform any functions or duties required by statute or regulation to be performed only by the Senate-confirmed official occupying the position. This redelegation does not supersede existing delegations of authority to or from the various Vacant Non-Career Positions to subordinate officials.

**Sec. 5 Expiration Date.** This Order is effective immediately. It will automatically expire for each Vacant Non-Career Position when filled by a Senate-confirmed appointee, upon the subsequent designation of acting officials, or a subsequent delegation to alternate officials. In the absence of the foregoing actions, it will terminate on **September 30, 2017**, unless extended, modified, or revoked.



Secretary of the Interior

Date: JUL 28 2017



THE SECRETARY OF THE INTERIOR  
WASHINGTON

ORDER NO. 3345, Amendment No. 6 (*Amended material bold and italicized*)

Subject: Temporary Redelelegation of Authority for Certain Vacant Non-Career  
Senate-Confirmed Positions

Sec. 1 **Purpose.** The purpose of this Order is to temporarily redelegate authority for the following vacant non-career Presidentially appointed and Senate-confirmed positions for which there is no Principal Deputy that would automatically become acting by operation of law:

- a. Deputy Secretary
- b. Solicitor
- c. Assistant Secretary – Policy, Management and Budget
- d. Assistant Secretary – Land and Minerals Management
- e. Assistant Secretary – Water and Science
- f. Assistant Secretary for Fish and Wildlife and Parks
- g. Assistant Secretary – Indian Affairs
- h. Commissioner, Bureau of Reclamation
- i. Director, Bureau of Land Management
- j. Special Trustee for American Indians

This Order is intended to ensure uninterrupted management and execution of the duties of these vacant non-career positions during the Presidential transition pending Senate-confirmation of new non-career officials. In conjunction with the officials who will be acting under the Vacancies Reform Act, this Order will provide necessary decision making authority to Presidentially appointed and Senate-confirmed positions across the Department of the Interior. The delegations made by this Order will only be in effect until each vacant non-career position is filled by Senate-confirmed appointees, upon the subsequent designation of acting officials, or a subsequent delegation to alternate officials.

Sec. 2 **Authority.** This Order is issued under the authority of Section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262), as amended, and in compliance with the Vacancies Reform Act.

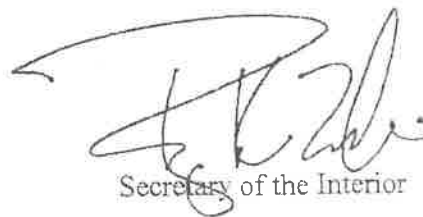
Sec. 3 **Delegation.** All functions, duties, and responsibilities of the following positions are hereby delegated to the specified employees:

- a. Deputy Secretary to James Cason, Associate Deputy Secretary
- b. Solicitor to Daniel Jorjani, Principal Deputy Solicitor
- c. Assistant Secretary – Policy, Management and Budget to Amy Holley, Chief of Staff to the Assistant Secretary – Policy, Management and Budget
- d. Assistant Secretary -- Land and Minerals Management to Katharine MacGregor, Deputy Assistant Secretary – Land and Minerals Management
- e. Assistant Secretary – Water and Science to Scott Cameron, Principal Deputy Assistant Secretary – Policy, Management and Budget
- f. Assistant Secretary for Fish and Wildlife and Parks to *Todd Willens, Assistant Deputy Secretary*
- g. Assistant Secretary – Indian Affairs to Michael Black, Special Assistant to the Director, Bureau of Indian Affairs
- h. Commissioner, Bureau of Reclamation to Alan Mikkelsen, Deputy Commissioner
- i. Director, Bureau of Land Management to Michael D. Nedd, Assistant Director, Minerals and Realty Management
- j. Special Trustee for American Indians to Deb DuMontier, Deputy Special Trustee for American Indians

The authority delegated herein may be further delegated by the designee as necessary, consistent with 200 DM 1 and all applicable statutes and regulations.

**Sec. 4 Limitation.** This delegation covers only those functions or duties that are not required by statute or regulation to be performed only by the Senate-confirmed official occupying the position. The Secretary must perform any functions or duties required by statute or regulation to be performed only by the Senate-confirmed official occupying the position. This redelegation does not supersede existing delegations of authority to or from the various Vacant Non-Career Positions to subordinate officials.

**Sec. 5 Expiration Date.** This Order is effective immediately. It will automatically expire for each Vacant Non-Career Position when filled by a Senate-confirmed appointee, upon the subsequent designation of acting officials, or a subsequent delegation to alternate officials. In the absence of the foregoing actions, it will terminate on *September 30, 2017*, unless extended, modified, or revoked.



Secretary of the Interior

Date: JUL 18 2017





THE SECRETARY OF THE INTERIOR  
WASHINGTON

ARCHIVED

ORDER NO. 3345, Amendment No. 5 (*Amended material bold and italicized*)

Subject: Temporary Redelelegation of Authority for Certain Vacant Non-Career  
Senate-Confirmed Positions

Sec. 1 **Purpose.** The purpose of this Order is to temporarily redelegate authority for the following vacant non-career Presidentially appointed and Senate-confirmed positions for which there is no Principal Deputy that would automatically become acting by operation of law:

- a. Deputy Secretary
- b. Solicitor
- c. Assistant Secretary – Policy, Management and Budget
- d. Assistant Secretary – Land and Minerals Management
- e. Assistant Secretary – Water and Science
- f. Assistant Secretary for Fish and Wildlife and Parks
- g. Assistant Secretary – Indian Affairs
- h. Commissioner, Bureau of Reclamation
- i. Director, Bureau of Land Management
- j. Special Trustee for American Indians

This Order is intended to ensure uninterrupted management and execution of the duties of these vacant non-career positions during the Presidential transition pending Senate-confirmation of new non-career officials. In conjunction with the officials who will be acting under the Vacancies Reform Act, this Order will provide necessary decision making authority to Presidentially appointed and Senate-confirmed positions across the Department of the Interior. The delegations made by this Order will only be in effect until each vacant non-career position is filled by Senate-confirmed appointees, upon the subsequent designation of acting officials, or a subsequent delegation to alternate officials.

Sec. 2 **Authority.** This Order is issued under the authority of Section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262), as amended, and in compliance with the Vacancies Reform Act.

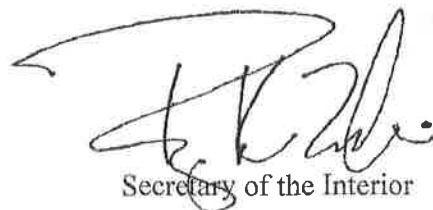
Sec. 3 **Delegation.** All functions, duties, and responsibilities of the following positions are hereby delegated to the specified employees:

- a. Deputy Secretary to James Cason, *Associate Deputy Secretary*
- b. Solicitor to ***Daniel Jorjani, Principal Deputy Solicitor***
- c. Assistant Secretary – Policy, Management and Budget to Amy Holley, Chief of Staff to the Assistant Secretary for Policy, Management and Budget
- d. Assistant Secretary – Land and Minerals Management to Katharine MacGregor, Deputy Assistant Secretary for Land and Minerals Management
- e. Assistant Secretary – Water and Science to ***Scott Cameron, Principal Deputy Assistant Secretary for Policy, Management and Budget***
- f. Assistant Secretary for Fish and Wildlife and Parks to ***Virginia Johnson, Principal Deputy Assistant Secretary for Fish and Wildlife and Parks***
- g. Assistant Secretary – Indian Affairs to Michael Black, Special Assistant to the Director, Bureau of Indian Affairs
- h. Commissioner, Bureau of Reclamation to Alan Mikkelsen, Deputy Commissioner
- i. Director, Bureau of Land Management to Michael D. Nedd, Assistant Director, Minerals and Realty Management
- j. Special Trustee for American Indians to Deb DuMontier, Deputy Special Trustee for American Indians.

The authority delegated herein may be further delegated by the designee as necessary, consistent with 200 DM 1 and all applicable statutes and regulations.

**Sec. 4 Limitation.** This delegation covers only those functions or duties that are not required by statute or regulation to be performed only by the Senate-confirmed official occupying the position. The Secretary must perform any functions or duties required by statute or regulation to be performed only by the Senate-confirmed official occupying the position. This redelegation does not supersede existing delegations of authority to or from the various Vacant Non-Career Positions to subordinate officials.

**Sec. 5 Expiration Date.** This Order is effective ***May 19, 2017***. It will automatically expire for each Vacant Non-Career Position when filled by a Senate-confirmed appointee, upon the subsequent designation of acting officials, or a subsequent delegation to alternate officials. In the absence of the foregoing actions, it will terminate on July 31, 2017, unless extended, modified, or revoked.



Secretary of the Interior

Date: MAY 19, 2017



THE SECRETARY OF THE INTERIOR  
WASHINGTON

ORDER NO. 3345, Amendment No.1 (**Amended material italicized**)

Subject: Temporary Redlegation of Authority for Certain Vacant Non-Career Senate-confirmed Positions

Sec. 1 **Purpose.** The purpose of this Order is to temporarily redelegate authority for the following vacant Non-Career Presidentially appointed and Senate-confirmed positions for which there is no Principal Deputy that would automatically become acting by operation of law:

- a. Deputy Secretary
- b. Solicitor
- b. Assistant Secretary – Policy, Management and Budget
- c. Assistant Secretary – Land and Minerals Management
- d. Assistant Secretary – Water and Science
- e. Assistant Secretary – Fish and Wildlife and Parks
- f. Assistant Secretary – Indian Affairs
- g. Commissioner for the Bureau of Reclamation
- h. Director of the Bureau of Land Management
- j. Special Trustee for American Indians.

This Order is intended to ensure uninterrupted management and execution of the duties of these vacant Non-Career Positions during the Presidential transition pending Senate confirmation of new non-career officials. In conjunction with the officials who will be acting under the Vacancies Reform Act, this Order will provide necessary decisionmaking authority to Presidentially appointed and Senate-confirmed positions across the Department of the Interior. The delegations made by this Order will only be in effect until each Vacant Non-Career Position is filled by Senate-confirmed appointees, upon the subsequent designation of acting officials, or a subsequent delegation to alternate officials.

Sec. 2 **Authority.** This Order is issued under the authority of Section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262), as amended, and in compliance with the Vacancies Reform Act.

Sec. 3 **Delegation.** All functions, duties, and responsibilities of the following positions are hereby delegated to the specified employees:

- a. Deputy Secretary to *James Cason*
- b. Solicitor to Edward Keable, Deputy Solicitor of General Law, or to Jack Haugrud in the event that the Secretary has been confirmed and he is no longer Acting Secretary
- c. Assistant Secretary – Policy, Management and Budget to Amy Holley, Chief of Staff to the Assistant Secretary – Policy, Management and Budget
- d. Assistant Secretary – Land and Minerals Management to Richard Cardinalc, Chief of Staff to the Assistant Secretary – Land and Minerals Management
- e. Assistant Secretary – Water and Science to Kerry Rae, Chief of Staff to the Assistant Secretary – Water and Science


- f. Assistant Secretary – Fish and Wildlife and Parks to Maureen Foster, Chief of Staff to the Assistant Secretary – Fish and Wildlife and Parks
- g. Assistant Secretary – Indian Affairs to Michael Black, Special Assistant to the Director, Bureau of Indian Affairs
- h. Commissioner, Bureau of Reclamation to David Murillo, Regional Director, Mid-Pacific Region
- i. Director, Bureau of Land Management to Kristin Bail, Assistant Director, *Resources and Planning*
- j. Special Trustee for American Indians to Deb DuMontier, Deputy Special Trustee for American Indians.

The authority delegated herein may be further delegated by the designee as necessary, consistent with 200 DM 1 and all applicable statutes and regulations.

**Sec. 4 Limitation.** This delegation covers only those functions or duties that are not required by statute or regulation to be performed only by the Senate-confirmed official occupying the position. The Secretary must perform any functions or duties required by statute or regulation to be performed only by the Senate-confirmed official occupying the position. This redelegation does not supersede existing delegations of authority to or from the various Vacant Non-Career Positions to subordinate officials.

**Sec. 5 Expiration Date.** This Order is effective on January 20, 2017 at 12:00 p.m. Eastern Standard Time. It will automatically expire when each Vacant Non-Career Position is filled by Senate-confirmed appointees, upon the subsequent designation of acting officials, or a subsequent delegation to alternate officials. In the absence of the foregoing actions, it will terminate on *May 31, 2017*, unless extended, modified, or revoked.

Date: JAN 20 2017

  
(Acting) Secretary of the Interior



THE SECRETARY OF THE INTERIOR  
WASHINGTON

ORDER NO. 3345

Subject: Temporary Redlegation of Authority for Certain Vacant Non-Career Senate-confirmed Positions

Sec. 1 **Purpose.** The purpose of this Order is to temporarily redelegate authority for the following vacant Non-Career Presidentially appointed and Senate-confirmed positions for which there is no Principal Deputy that would automatically become acting by operation of law:

- a. Deputy Secretary
- b. Solicitor
- b. Assistant Secretary – Policy, Management and Budget
- c. Assistant Secretary – Land and Minerals Management
- d. Assistant Secretary – Water and Science
- e. Assistant Secretary – Fish and Wildlife and Parks
- f. Assistant Secretary – Indian Affairs
- g. Commissioner for the Bureau of Reclamation
- h. Director of the Bureau of Land Management
- j. Special Trustee for American Indians

This Order is intended to ensure uninterrupted management and execution of the duties of these vacant Non-Career Positions during the Presidential transition pending Senate confirmation of new non-career officials. In conjunction with the officials who will be acting under the Vacancies Reform Act, this Order will provide necessary decisionmaking authority to Presidentially appointed and Senate-confirmed positions across the Department of the Interior. The delegations made by this Order will only be in effect until each Vacant Non-Career Position is filled by Senate-confirmed appointees, upon the subsequent designation of acting officials, or a subsequent delegation to alternate officials.

Sec. 2 **Authority.** This Order is issued under the authority of Section 2 of Reorganization Plan No. 3 of 1950 (61 Stat. 1262), as amended, and in compliance with the Vacancies Reform Act.

Sec. 3 **Delegation.** All functions, duties, and responsibilities of the following positions are hereby delegated to the specified employees:

- a. Deputy Secretary to **Juliette Lillie**, Director, Office of the Executive Secretariat
- b. Solicitor to **Edward Keable**, Deputy Solicitor of General Law, or to **Jack Haugrud** in the event that the Secretary has been confirmed and he is no longer Acting Secretary
- c. Assistant Secretary – Policy, Management and Budget to **Amy Holley**, Chief of Staff to the Assistant Secretary – Policy, Management and Budget
- d. Assistant Secretary – Land and Minerals Management to **Richard Cardinale**, Chief of Staff to the Assistant Secretary – Land and Minerals Management
- e. Assistant Secretary – Water and Science to **Kerry Rae**, Chief of Staff to the Assistant

Secretary – Water and Science

- f. Assistant Secretary – Fish and Wildlife and Parks to **Maureen Foster**, Chief of Staff to the Assistant Secretary – Fish and Wildlife and Parks
- g. Assistant Secretary – Indian Affairs to **Michael Black**, Special Assistant to the Director, Bureau of Indian Affairs
- h. Commissioner, Bureau of Reclamation to **David Murillo**, Regional Director, Mid-Pacific Region
- i. Director, Bureau of Land Management to **Kristin Bail**, Assistant Director, Office of National Conservation Lands and Community Partnerships
- j. Special Trustee for American Indians to **Deb DuMontier**, Deputy Special Trustee for American Indians.

The authority delegated herein may be further delegated by the designee as necessary, consistent with 200 DM 1 and all applicable statutes and regulations.

**Sec. 4 Limitation.** This delegation covers only those functions or duties that are not required by statute or regulation to be performed only by the Senate-confirmed official occupying the position. The Secretary must perform any functions or duties required by statute or regulation to be performed only by the Senate-confirmed official occupying the position. This redelegation does not supersede existing delegations of authority to or from the various Vacant Non-Career Positions to subordinate officials.

**Sec. 5 Expiration Date.** This Order is effective on January 20, 2017 at 12:00 p.m. Eastern Standard Time. It will automatically expire when each Vacant Non-Career Position is filled by Senate-confirmed appointees, upon the subsequent designation of acting officials, or a subsequent delegation to alternate officials. In the absence of the foregoing actions, it will terminate on **May 31, 2017**, unless extended, modified, or revoked.

Date: Jan 19, 2017

/s/ Sally Jewell  
Secretary of the Interior